## REMARKS

In response to the Office Action dated September 22, 2005 (hereinafter referred to as the "Office Action"), Assignee respectfully submits that all pending claims (claims 20-21 and 23) are in condition for allowance.

In the Office Action, the United States Patent and Trademark Office (the "Office") rejected claims 1-11 and 19 under 35 U.S.C. § 103(a) as being unpatentable over *Iannone* (U.S. Patent No. 4,315,551) in view *Pfaff* (U.S. Patent No. 2,839,754). Claims 1-11 and 19 are canceled in this Response and Amendment. Consequently, the rejection of claims 1-11 and 19 are now moot. Further, in the Office Action, the Office did not object to or reject claims 20-23, and Assignee respectfully submits that pending claims 20-21 and 23 are in condition for allowance.

***March 2006 Interview:***

On March 21, 2006, Examiner Paul Durand and Bambi Walters (Attorney for Assignee) participated in a teleconference to discuss the cited art – *Iannone* and *Pfaff*. Participants discussed (1) claimed subject matter includes the "closed proximal end flar[ing] outward from a proximal end of the elongated shank towards a second portion of the closed proximal end," (2) claimed subject matter includes the driver sleeve "having a complimentary shape to mate with an interior surface of the longitudinal bore" and the longitudinal bore includes the closed distal end, the interior of the elongated shank, and the open distal end (not just a "cylindrical guide 3" as described in *Pfaff*), (3) claimed subject matter comprises "a body" (not two parts such as "the head 40" and "the body 22" of *Iannone*), and (4) a long felt need in the art, that is, 'recognition of need, and difficulties encountered by those skilled in the field, are classical indicia of unobviousness' as the cited art is dated. *In re Dow Chemical*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). On March 22, 2006, participants discussed allowability of claims 20-23 with SPE Vidovich and agreed that the finality of the September 22, 2005 Office Action would not apply to these claims if they were amended with each "corresponding independent base claim" (*i.e.*, without further amendments).

***Previously Presented Claims 20, 21, and 23:***

The Office did not object or reject claims 20-23, and Assignee submits that all of these claims are in condition for allowance and respectfully requests a Notice of Allowance for currently pending claims 20, 21, and 23. Claims 20, 21, and 23 are reproduced below:

[c20] A driver cap assembly, comprising:

*a body* having a closed proximal end, an elongated shank, and an open distal end, wherein a first portion of the *closed proximal end flares outward* from a proximal end of the elongated shank towards a second portion of the closed proximal end, and *wherein an interior of the elongated shank and the open distal end comprise a longitudinal bore, the longitudinal bore having an interior wall defining a longitudinal axis of the body*; and

a driver sleeve having a first end, a second end, and a longitudinally extending shank from the first end towards the second end, an exterior surface of *the longitudinally extending shank having a complimentary shape to mate with an interior surface of the longitudinal bore of the tubular body such that when the exterior surface is mated with the interior surface, the longitudinally extending shank extends to the open distal end of the body,* and the second end having a driver sleeve longitudinal bore, an interior of the driver sleeve longitudinal bore adapted to fit about a proximal end of a shafted body, the first end of the driver sleeve having another driver sleeve longitudinal bore adapted to fit about another proximal end of another shafted body, *the another driver sleeve longitudinal bore of the first end having a different shape than the driver sleeve longitudinal bore of the second end.*

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[c21] A driver cap assembly, comprising:

*a body* having a closed proximal end, an elongated shank, and an open distal end, wherein a first portion of the *closed proximal end flares outward* from a proximal end of the elongated shank towards a second portion of the closed proximal end, and wherein *an interior of the elongated shank and the open distal end comprise a longitudinal bore*, the longitudinal bore having an interior wall defining a longitudinal axis of the body; and

a driver sleeve having a first end, a second end, and a longitudinally extending shank from the first end towards the second end, an exterior surface of *the longitudinally extending shank having a complimentary shape to mate with an interior surface of the longitudinal bore of the tubular body such that when the exterior surface is mated with the interior surface, the longitudinally extending shank extends to the open distal end of the body,* and the second end having a driver sleeve longitudinal bore, an interior of the driver sleeve longitudinal bore adapted to fit about a proximal end of a shafted body, *the driver sleeve longitudinal bore of the second end having a planar closed end.*

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[c23] A method comprising:

positioning a driver cap assembly over a proximal end of a shafted body, comprising:

*a body* having a closed proximal end, an elongated shank, and an open distal end, wherein a first portion of the *closed proximal end flares outward* from a proximal end of the elongated shank towards a second portion of the closed proximal end, and wherein *an interior of the elongated shank and the open distal end comprise a longitudinal bore*, the longitudinal bore having an interior wall defining a longitudinal axis of the body,

a driver sleeve having a first end, a second end, and a longitudinally extending shank from the first end towards the second end, *an exterior surface of the longitudinally extending shank having a complimentary shape to mate with an interior surface of the longitudinal bore of the tubular body such that when the exterior surface is mated with the interior surface, the longitudinally extending shank extends to the open distal end of the body, and the second end having a driver sleeve longitudinal bore*, an interior of the driver sleeve longitudinal bore adapted to fit about a proximal end of a shafted body, wherein *the driver sleeve longitudinal bore of the second end comprises a planar closed end*; and

applying a force to the proximal end of the driver assembly such that a distal end of the shafted body is driven into a surface.

U.S. Patent Application No. 10/789,786, claims 20, 21, and 23 (emphasis added by Assignee).

Independent claims 20, 21, and 23 claim an apparatus or a method that includes an apparatus that has (1) *a body*, (2) *an outwardly flared, closed proximal end*, and (3) *a driver sleeve that when mated with the body extends from the proximal end to the open distal end of the body.* Further, in regards to claims 21 and 23, these further claim (4) *the driver sleeve longitudinal bore of the second end having a planar closed end.* In regards to claim 20, this claim further includes (5) the first end of the driver sleeve having another driver sleeve longitudinal bore adapted to fit about another proximal end of another shafted body, *the another driver sleeve longitudinal bore of the first end having a different shape than the driver sleeve longitudinal bore of the second end. Iannone* and/or *Pfaff* do not anticipate or obviate the claimed subject matter.

The combination of *Iannone* and *Pfaff* does not disclose, teach, and/or otherwise suggest the claimed subject matter. *Iannone* describes two components -- (1) a hand held driver that is attached (via threaded means 44, 46 or welded means 80) to (2) a head 40. Further, *Iannone* describes a rod driver 20 having a boss 42 with a lowermost end 50 located with a bore 30 of the driver head such that the bore 30 is a blind-ended bore with a concave blind end with an aft end 70 of the driver head 40 remote from the boss 42. *See*, U.S. Patent No. 4, 315,551, col. 2, line 50 thru col. 3, line 34 and FIG. 2. More specifically, *Iannone* discloses:

> A *hand-held rod driver 20* is shown in the Figures, and is the subject of the present disclosure. As shown, the driver 20 includes a tubular body 22 having a fore end 26 and an aft end 28 and a bore 30 defined axially thereof. The bore 30 has a diameter greater than the diameter of the rod 10 so that any expected size rod can be received within the bore 30 in a free sliding accommodation. Knurling 32 and 34 is located on the outside surface of the tubular body for providing a secure grip. Preferably, the bands of knurling are each four inches wide and are equidistant from the fore and aft ends of the body.
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> *A driver head is affixed to the aft end of the body, and has an outer diameter essentially matching the outer diameter of the tubular body.* One embodiment of the device is shown in FIG. 2, and includes a *head 40* which has *a boss 42 having external threads 44 defined thereon. The end of the bore 30 adjacent the aft end of the body 22 has internal threads 46 defined on the inner surface 48 thereof for cooperable association with the*

*threads 44 of the head boss. The head is thus threadably attached to the body in the FIG. 2 embodiment.*

*The boss 42 has a lowermost end 50 which is located within the bore 30 to close off that bore. A parabolic cupola 60 is defined in the boss to open into the bore 30. The bore 30 is thus a blind-ended bore with a concave blind end.* The cupola has a heel 62 which is in axial alignment with the longitudinal centerline of the bore so that the cupola has an inner surface 64 which is symmetric with respect to that centerline. The cupola intersects the surface of the boss lowermost end, and is upwardly convergent therefrom. Thus, a continuously converging bore end is defined by the cupola forming cutout portion of the driving head.

The aft end of the rod 10 is contacted by the cupola inner surface 64 during an embedding process. The rod 10 is formed of a deformable material which is deformed from the initially planar shape shown for the aft end thereof in FIG. 1 to the bullet shape shown for the aft end 28' in FIG. 3. The planar end 28 has a circular periphery which corresponds to longitudinal surface L of the rod, and this periphery contacts the inner surface of the cupola during the driving process to force the rod aft end into the cupola. The metal of the rod deforms due to the malleable nature thereof and due to the repeated impacts delivered thereto. However, the cupola serves as a guide to form the deformed rod into a shape which is not only aesthetically pleasing, but which will not inhibit further operation of the head during the driving process. The final configuration of the aft end 28' thus conforms to the shape of the cupola and is accordingly a truncated paraboloid, and can be described, as above, as being bullet-shaped. The end 28' is truncated because the rod 10 contacts the cupola inner surface 64 at a location spaced from the heel 62. The amount of spacing between the heel 62 and the rod aft end is determined by the outer diameter of the rod and the amount of deformation undergone by the rod during the driving process.

*The driver head 40 includes an aft end 70 located remote from the boss 42 which is conical in shape.* The apex 72 of the cone-shaped end 70 is located within the head 40 so that the cone is inwardly convergent of the head 40. The preferred angle of the cone is 10.degree. with respect to wall 74 of the head 40.

U.S. Patent No. 4, 315,551, col. 2, line 50 thru col. 3, line 34 (emphasis added by Assignee).

*Pfaff* does not teach, disclose, and/or otherwise suggest the claimed subject matter and does not cure the deficiencies of *Iannone*. More specifically, *Pfaff* discloses "a fastener driving tool 2 compris[ing] *a cylindrical guide member 3 which is provided with an axial bore 4 sized to fit the heads 5 of fasteners 6 to be driven. This guide member 3 is made of hardened steel tubing*

and includes near its front end 7 a supplemental guide arrangement 8 embodying in three radial bores 9 three steel balls 10. *Radial bores 9 intersect bore 4 in guide member 3 at right angles and intersect bore 4 in guide member 3 at right angles and intersect bore 4 in guide member 3 at right angles* and intersect each other at equal angles to effect proper relation of steel balls 10 with respect to each other when yieldingly forced by spring split ring member 11 toward axial bore 4 to grip shank 12 of fastener 6 advancing in axial bore 4 during driving operations." U.S. Patent No. 2,839,754, col. 2, lines 40 -55 (emphasis added by Assignee). Consequently, *Pfaff* fails to even remotely describe or suggest *a driver sleeve that mates with a body such that the driver sleeve extends to an open distal end of the body an interior of the elongated shank and the open distal end comprise a longitudinal bore.*

Still further, neither Iannone and Pfaff, disclose, suggest, or otherwise disclose that (4) *the driver sleeve longitudinal bore of the second end having a planar closed end* or that (5) the first end of the driver sleeve comprises another driver sleeve longitudinal bore adapted to fit about another proximal end of another shafted body, *the another driver sleeve longitudinal bore of the first end having a different shape than the driver sleeve longitudinal bore of the second end.*

***Due Process - Claims 20, 21, and 23:***

Assignee respectfully submits that the Office has failed to satisfy any burden of proof to maintain a FINAL Office Action against claims 20, 21, and 23. See, for example, MPEP §§ § 2143 and 706.02(j). The Office does not object to or reject claims 20, 21, and 23 submitted in Assignee's Amendment and Response filed on June 30, 2005. Assignee respectfully submits that claims 20, 21, and 23 are allowable. Further, claims 20, 21, and 23 have been amended with the corresponding independent base claim and do not include additional limitations and do not require a new search.

Further, if the Office wishes to challenge the patentability of claims 20, 21, and 23, then the Office MUST factually support this challenge, and another office action is required. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

## CONCLUSION

Assignee cancels claims 1-11 and 19, and consequently, the rejection of these claims is now moot. Furthermore, the Assignee amends claims 20, 21, and 23 in independent format to include the limitations of respective independent claims and shows that claims 20, 21, and 23 overcome the cited art by the Office (in regards to incorporated independent claims 1 and 19). Accordingly, the Assignee respectively submits that pending claims 20, 21, and 23 are ready for allowance and respectfully requests a Notice of Allowance for these claims.

## AUTHORIZATION FOR PAYMENT OF FEES & REQUEST FOR AN EXTENSION OF TIME

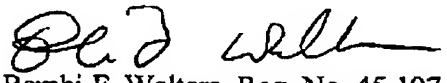
Assignee respectfully requests an additional three month extension of time fee for the Response to the September 22, 2005 Office Action from December 22, 2005 to March 22, 2006.

| Description of Fee | Amount |
|---|---|
| Three Month Extension of Time Fee | $1020.00 |
| | |
| **Total** | **$1,020.00** |

The Assignee, therefore, includes a Credit Card Payment Form PTO-2038 for $1,020.00. If there are any other fees due in connection with the filing of this response, please charge the fees to the credit card on file. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to the credit card on file.

If the Office has any questions, the Office is invited to contact the undersigned at (757) 253-5729 or bambi@wzpatents.com.

Respectfully submitted,



Bambi F. Walters, Reg. No. 45,197
Attorney for Assignee
PO Box 5743
Williamsburg, VA 23188
Telephone: 757-253-5729

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